No. 920

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IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.
Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

APPELLEE'S BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM APPEAL

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I. INTRODUCTORY STATEMENT

The Appellant, Center City Motel, Inc., has taken an appeal to this Court from the Final Judgment of the District Court of Appeal, First District, State of Florida, reported in 134 So.2d 856, and has filed a Statement as to Jurisdiction. The Appellee has filed a Motion to Dismiss or Affirm the Appeal and files this Brief in support of the grounds as set forth in the Motion.

II. JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 28 U.S.C.A., Section 1257 (2), on the grounds that Section 509.201 (2) (a), Florida Statutes, as construed by the District Court of Appeal, First District of Florida, from which decision Certiorari to the Supreme Court of Florida was denied, was violative of the United States Constitution.

III. THE STATUTE INVOLVED

The Statute involved is Section 509.201 (2) (a), Florida Statutes, which reads as follows:

509.201 Room rates; posting in rooms; advertising; penalties. –

. . . . . ;

(2) (a) "No person shall display or cause to be displayed any sign or signs which may be seen from a public highway or street, which sign or signs include in dollars and cents a statement relating to the rates charged at a public lodging establishment, unless such sign or signs include in letters and figures of similar size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect. The said rates posted in each room of the establishment and with those filed with the hotel and restaurant commissioner as required by subsection (1)."

IV. QUESTION PRESENTED

The Question Presented in Appellant's Statement as to Jurisdiction attempts to raise for the first time in this Court the question of whether the statute involved is in violation of the United States Constitution. Neither this question nor any other federal question was presented to nor decided by any of the state Courts below.

V. STATEMENT OF THE CASE

The decision of the Court below, set forth in its entirety beginning on page ii of the Appendix to Appellant's Statement as to Jurisdiction, contains a statement of the facts in the case and Appellant's contentions in the Court below. It may be summarized as follows:

Section 509.201 (2) (a), Florida Statutes, provides in substance that if the owner of a public lodging establishment under the jurisdiction of the Florida Hotel and Restaurant Commission displays a sign visible from a public street or highway, including in dollars and cents a statement relating to any rates charged, then he must include in letters and figures certain additional information on the sign in letters and figures of similar size and prominence. Appellant's sign contained a rate in letters and figures, together with the additional required information but the letters and figures varied from four feet in height located forty-three feet above the ground and readable 1,600 feet away to letters and figures seven or nine inches in height, located twenty-six feet from the ground and readable only 200 feet away. The Hotel Commissioner found that the sign displayed by the Appellant was in violation of the statute. Appellant filed petition for Writ of Certiorari from this decision to the District Court of Appeal contending that the sign contained all the information required by the statute and therefore it fully complied with the spirit and intent thereof and could not be held to constitute a violation of the statute. Appellant further contended that to interpret or construe the statute otherwise would be a violation of his constitutional rights. No question was raised as to the constitutionality of the statute per se.

Appellee has moved to dismiss or affirm the appeal on the following grounds.

VI. ARGUMENT

1.

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA, IS BASED ON AN INDEPENDENT NONFEDERAL QUESTION.

The statute in question requires that if a sign includes in

dollars and cents a statement as to the rates charged at a public lodging establishment, it must then also contain certain other information in letters of similar size and prominence.

The facts as set forth in the decision of the District Court of Appeals, First District (Appendix A to Appellant's Statement of Jurisdiction) are not in controversy and reveal that the information in Appellant's sign required to be in letters and figures of similar size and prominence varied from letters and figures four feet in height located forty-three feet above ground to letters and figures seven to nine inches in height located twenty-six feet above ground.

Without passing on any federal question, the District Court of Appeal decision merely held that the letters and figures were not of similar size and prominence as required by the statute, saying:

> "An interpretation of the words 'of similar size and prominence' is the crux of this review.
>
> • • • • • •
>
> *** The essence of the violation is the failure to so construct the sign as to make all figures and letters appearing thereon of similar size and prominence. It indeed taxes the credulity of this court to urge the contention that letters or figures four feet in height and erected forty-three feet from the ground are of similar size and prominence to other figures and letters seven or nine inches in height and erected twenty-six feet from the ground. This is especially so when the larger figures and letters are readable as far away as 1600 feet, while the small letters and figures are readable at a distance of not more than 200 feet from the sign."

This Court will not take jurisdiction and review the decision of a State Court when the decision or judgment rested on an independent nonfederal ground. The Florida Court interpreted

the Florida Statute and said that such a variance in height of letters and their location was not in compliance with the Florida Statute requiring that they be of similar size and prominence.

On appeals from State Court judgments, where it appears that, notwithstanding a federal question, judgment rests on adequate nonfederal grounds and hence would not be affected on Supreme Court decision, appeal will be dismissed. *U. S. v. Hastings*, 1935, 56 S.Ct. 218, 296 U. S. 188, 80 L.Ed. 148. See, also *Herb v. Pitcairn, Ill.* 1945, 65 S.Ct. 459, 324 U. S. 117, 89 L.Ed. 789; People ex rel. *Doyle v. Atwell*, 1923, 43 S.Ct. 410, 261 U. S. 590, 67 L.Ed. 814; *Bilby v. Stewart, Okl.* 1918, 38 S.Ct. 264, 246 U. S. 255, 62 L.Ed. 701; *Municipal Securities Corp. v. Kansas City, Mo.* 1918, 38 S.Ct. 224, 246 U. S. 63, 62 L.Ed. 579.

2.

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA, DID NOT DRAW IN QUESTION THE VALIDITY OF ANY STATE STATUTE ON THE GROUND OF ITS BEING REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

Although the statute in question requires that if rates are displayed in a sign, the rates and certain other information must be in letters and figures of similar size and prominence, the Appellant's only real contention in the State Court was that his sign complied with the statute and to interpret the statute otherwise would violate his constitutional rights. Admitting that there was a very substantial variance in the size of the letters and figures, their location, and the distance from which they were readable, Appellant contended that since the sign contained all of the information required by the statute that it fully complied with the spirit and intent of the law and

to interpret the statute otherwise would violate his constitutional rights. The Appellant's contention and the decision of the State Court below did not draw in question the validity of the statute but rather was an interpretation of the state statute. This is obvious in the decision appealed from in which the District Court of Appeal said:

> "It is petitioner's contention that since the sign complained of contains all the information required by the statute, that it fully complies with the spirit and intent thereof and cannot be held to constitute a violation. It bases this position upon the decision of the Supreme Court rendered in Adams.[2] The Adams decision construed the statute as it then existed and prior to the time it was amended in its present form. In all material respects as concerns the question now under consideration, the provisions of the two statutes are the same. The Adams decision merely held that the statute was not violative of any constitutional provision, and was a legitimate exercise of the police power by the State.
>
> Appellant's contention ignores the fact that the violation of which it is found guilty does not concern a failure to include on the sign all the information required by the statute."

(Appellant's Appendix page iv)

Appeal or Certiorari to this Court will not lie from a decision or judgment of a State Court where the validity of the statute has not been drawn into question. 28 U.S.C.A., Section 1257 (2) (3); *Flournoy v. Wiener, La.* 1944, 64 S.Ct. 548, 321 U.S. 253, 88 L.Ed. 708.

3.

THERE IS NO FEDERAL QUESTION INVOLVED.

Appellant's Statement as to Jurisdiction shows on its face that

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[2] Adams v. Miami Beach Hotel Association (Fla. 1955), 77 So.2d 465

no federal question was involved. The first time Appellant has ever attempted to raise a federal question was in his Statement as to Jurisdiction by his Question presented in which he says the statute per se is violative of the United States Constitution. It only contended that the failure of the Florida Court to construe the statute as it desired would violate its constitutional rights. In no Court below did Appellant raise the question of whether the statute per se violated either the Federal or State Constitutions. The Appellant could have and should have raised this question in the Court below. It is now precluded from doing so for the first time in this Court.

At most, the Appellant made a bare averment in the State Court that the Commission's interpretation of the statute would make it violative of the Federal and State Constitutions. This is confirmed by its Statement as to Jurisdiction on page 6 where Appellant says:

> "On page 3 of Appellant's petition for writ of certiorari it stated: (TR-14)
>
> 'Respondent has given an interpretation to Section 509.201 (2)(a) that would make the statute violative of the due process of law and equal protection clauses of the State of Florida and United States Constitutions.'
>
> In Appellant's brief filed with the District Court of Appeal, First District, State of Florida, one of its points was Point III (TR-14) which read:
>
> 'Respondent Commission's interpretation of Section 509.201 (2)(a) would make the statute violative of the federal and state constitutions.'"

The bare averment that such an interpretation of the statute violates Appellant's constitutional rights is not sufficiently definite to raise a federal question as regards the United States

Supreme Court's jurisdiction of an appeal. *Herndon v. State of Georgia*, 1935, 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530.

4.

THE CAUSE IS MOOT.

On April 18, 1962, the Appellant, City Center Motel, Inc., fully complied with the Order of the Florida Hotel and Restaurant Commission and with the statute which he now contends is in violation of the United States Constitution.

In the case of *United States et al. v. Alaska S. S. Co., et al.*, 253 U.S. 113, 40 S.Ct. 448, 64 L.Ed. 808, this Court said:

> "• • • it is a settled principle in this court that it will determine only actual matters in controversy essential to the decision of the particular case before it. Where by an act of the parties, or a subsequent law, the existing controversy has come to an end, the case becomes moot and should be treated accordingly. However convenient it might be to have decided the question of the power of the Commission to require the carriers to comply with an order prescribing bills of lading, this court 'is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it.'"

As expressed more succinctly in the case of *Doremus v. Board of Education*, 342 U.S. 429, 72 S.Ct. 394, 96 L.Ed. 475:

> "• • • this Court does not sit to decide arguments after events have put them to rest."

The cause is moot and there is no justiciable case or controversy.

3.

QUESTION IS NOT SUBSTANTIAL

The only question raised in the State Court below was whether it would be a violation of Appellant's constitutional rights to interpret the statute to mean that Appellant's sign containing letters and figures varying in size from four feet in height located forty-three feet above ground to letters and figures seven to nine inches in height located twenty-six feet above ground was in violation of the statute when it contained all the information or "told the whole story" and therefore complied with the spirit and intent of the statute. The only thing substantial about this question is that the Supreme Court of the United States would then have the opportunity to tell more than 40,000 motels and hotels in Florida how much variance they could have in their letters and figures in a sign and still comply with the spirit and intent of the Florida statute requiring such information to appear in letters and figures of similar size and prominence.

CONCLUSION

For the foregoing reasons the Appeal should be dismissed or affirmed.

Respectfully submitted,

May 25, 1962

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Support of Motion to Dismiss or Affirm Appeal has, pursuant to Rule 33 (1) of the Revised Rules of The Supreme Court of The United States, been served by mail upon John H. Cotten, of Cotten, Shivers, Gwynn & Daniel, Counsel for Appellant, Post Office Box 12, Tallahassee, Florida, this _____ day of May, A. D. 1962.

WELDON G. STARRY